IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.896 OF 2004

1. Mr. Manish Mehta of
Bombay, Indian Inhabitant,

2. Mr. Ashish Mehta of
Bombay, Indian Inhabitant,

3. Mr. Vinod Jaiswal

4. Mr. Sunil Koregaonkar

5. M/s. Free India Assurances
Services Ltd., a Company
incorporated under the
provisions of the Companies
Act, all having their office
at Babu Bhavan, Balasheth
Madhukar Road,
Elphinstone Road Station,
Mumbai 400 013. .... Petitioners

- Versus -

1. The State of Maharashtra

2. Smt. Meena Sharma w/o Satish
Sharma, adult, Indian
Inhabitant residing at 70,
Lodhi Mohalla, Indore,
Madhya Pradesh. .... Respondents

Shri A.M. Saraogi for the Petitioner.

Shri D.S. Mhaispurkar, Addl. Public Prosecutor, for the Respondent No.1.

Shri S.V. Marwadi for the Respondent No.2.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: MARCH 24, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Rule. By consent, the rule is made returnable forthwith. The petitioner challenges the summons issued under Section 420 or 406 read with Section 120-B of the Indian Penal Code (IPC) by the Addl. Chief Judicial Magistrate at Indore. The challenge to the summons issued by the learned Magistrate on the complaint filed by the respondent No.2 is two-fold. Firstly, that the Court of the Magistrate at Indore has no jurisdiction to entertain the complaint as no cause of action for entertaining such complaint arose at Indore, and secondly, that the complaint filed by the respondent No.2 does not disclose any offence of the nature punishable under either Section 420 or Section 406 of the IPC under which the summons has been issued.

2. The learned Advocate for the petitioner, placing reliance in the decision of the Apex Court in the matter of **Navinchandra N. Majithia v. State of Maharashtra,** reported in AIR 2000 SC 2966 submitted that apart from the bare allegations in the complaint, the documents which are produced along with the complaint nowhere disclose any transaction between the petitioner and the respondent No.2 so as to give rise for any cause of action within the jurisdiction of the Chief Judicial Magistrate at Indore to entertain the said complaint. The grievance of the respondent No.2 being in the nature

of non-compliance of the obligations by the principal towards its agent, it is purely a civil liability, if at all there could be said to be any liability of the petitioner towards the respondent No.2, but in no case the complaint discloses any fact which could give rise to any offence punishable under Section 406 or Section 420 of the IPC. The complaint, on the face of it, discloses an artificially created cause of action to justify the complaint at the Indore Court and the same is apparent from the documents annexed to the complaint and therefore this is a fit case for quashing the summons issued to the petitioner as well as the complaint filed by the respondent No.2.

3. The Apex Court in **Navinchandra Majithia's** case (supra), in paras 13 and 14 thereof, to which attention was drawn by the learned Advocate for the petitioner, had held thus:-

> "13. We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a

> fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in the particular writ petition. **The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial** li**mits of its jurisdiction.** It depends upon the facts of each case.
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> 14. In the present case, a large number of events have taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong. If the averments in the writ petition are correct then the major portion of the facts which led to the registering of the FIR have taken place at Bombay."
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> (emphasis supplied)

The above ruling of the Apex Court, therefore, clearly lays down the law that merely because a party chooses to

create a fake cause of action or concocts events in order to justify the filing of the complaint in a particular Court of Magistrate, it could be necessary for the Magistrate to ascertain from the facts disclosed whether really the same have happened within the territorial limits of his jurisdiction and decide about the maintainability of the complaint in such Court of the Magistrate. When the maintainability of such complaint on account of lack of territorial jurisdiction is challenged before the High Court, even when the Court of Magistrate lies in a different State, the High Court would be justified in ascertaining whether the cause of action has really arisen within the territorial limits of the jurisdiction of the concerned Magistrate, albeit, this would depend upon the facts of each case. At the same time, it is settled principle of law that when there is a challenge thrown to the FIR or the complaint, the person challenging either the FIR or the complaint cannot be heard on the basis of the materials extraneous to such FIR or the complaint. The challenge will have to be considered bearing in mind the facts narrated in the FIR and the complaint and there cannot be a Court inquiry as regards the genuineness of the allegations. {vide: **Mahavir Prashad Gupta and another v. State of National Capital Territory of Delhi and others** (2000) 8 SCC 115}.

4. Bearing in mind the law laid down by the Apex Court on the relevant issue, if one peruses the complaint filed by the respondent No.2 in the Court of the Magistrate at Indore, it refers to the allegation that on 11-11-2000 a seminar was arranged on behalf of the petitioner at Aaram Hotel, Gandhi Hall, Indore and an advertisement in that regard was published through the daily newspapers under the caption "Earn Rs.5000/- to Rs.8000/- per week. No ceiling, no target. Part-time job." It is the case of the respondent No.2 that pursuant to the said advertisement, she attended the seminar on the relevant day, time and place and she was informed about the scheme which was being promoted by some of the persons named as the accused in the complaint and she was also informed about the benefits which can be derived from the scheme, and accordingly she joined the said scheme, pursuant to which she received certain commission from February, 2001 till June, 2001. She was also issued with a certificate of merit on 25-3-2001 in relation to the services rendered by her for the promoting the business of Free India Concept, stated to have been floated by the petitioner. Her further contention in the complaint is that she had applied for renewal of her services on payment of Rs.3300/- on 21-11-2001 by demand draft No.574754, issued on the State Bank of India, Indore. It is her further contention that the accused persons from 1 to 5

and 7 and 8 intentionally and by entering into a conspiracy denied the commission amount payable to the complainant and illegally diverted it to the name of the accused No.6. She has sought to rely upon the booklet of Free India Concept, form of Free India Concept, receipt of the amount of Rs.2500/- deposited by her on 23-11-2000, the identity letter issued to her, the statements of the commission amount received by her, certificate of merit, the record of information obtained through internet, etc., and has further stated in the complaint that the commission amount was paid to the complainant at Indore and the complainant did her agency's business as the agent of the petitioner-company in Indore city.

5. The averments made in the complaint undoubtedly refer to certain representation made to the respondent No.2 on behalf of the petitioner-company and further rendering of services of commission agent by her at Indore, and further application for renewal of such services to be rendered by the complainant, failure on the part of the petitioner to pay the commission, diversion of the commission amount to the account of the accused No.6 which was actually payable to the complainant on account of the services rendered by her at Indore, part-payment of the commission towards the services rendered being paid in Indore, etc. All these

facts apparently disclose that the grievance of the complainant-respondent No.2 is in relation to the acts which have occurred at Indore and even the payments having been made at Indore. The complaint, on the face of it, therefore, undoubtedly discloses allegations which could be the subject-matter of adjudication before a Magistrate at Indore. The contention of the learned Advocate for the petitioner, therefore, that the complaint on the face of it nowhere discloses any act which could justify the filing of the complaint at Indore cannot be accepted. However, his further contention is that those allegations are not sufficient to disclose the offence punishable either under Section 406 or Section 420 of the IPC and the averments in the complaint have been made merely to concoct the cause of action to justify the filing of the complaint at Indore. In that regard, attention has been drawn to the pleadings in the petition.

6. Perusal of the petition, however, inevitably discloses clear averments to the effect that the respondent No.2 happened to be a resident of Indore and she had opted to join the concerned scheme of the petitioner by filing the necessary documents. The petition also contains the averment to the effect that the respondent No.2 had started acting contrary to the interest of the company of the petitioner and that

therefore her services were terminated. The annexures to the petition also includes the copies of the statements regarding the details of the payments stated to have been relied upon by the respondent No.2 in the complaint itself. It discloses cheques having been issued on ICICI Bank Account No.714 in relation to the commission amount stated to have been paid to the respondent No.2. The petition, however, nowhere discloses that the field of operation of the respondent No.2 pursuant to the joining of the scheme and for which the commission was paid to the respondent No.2 to be beyond the city of Indore or beyond the jurisdiction of the territorial limits of the Magistrate at Indore inspite of the fact that there is a clear averment in the complaint that she was rendering the services in the city of Indore and on that count the commission was being paid to her. Undoubtedly, it is the contention of the learned Advocate for the petitioner that the commission was paid under cheques drawn on the ICICI Bank by the partner of the petitioner at Mumbai. However, there is nothing on record to disclose that the said cheques were encashed or transacted at any place beyond the territorial limits of the jurisdiction of the Magistrate at Indore. Obviously, the amounts under those cheques might have been paid within the territorial limits of the said Court of the Magistrate at Indore, as has been claimed by the respondent No.2.

It is the grievance of the respondent No.2 that she had already paid the renewal amount for continuation of the said commission on the services to be rendered by the respondent No.2. Apart from claiming that her services have been terminated, nothing has been stated by the petitioner in the petition as regards the return of the renewal amount stated to have been paid by the complainant under the demand draft to the petitioner, nor it is the case of the petitioner that the said amount was not received by the petitioner. In the back ground of all these facts, which are necessarily to be considered, as was observed by the Apex Court in Navinchandra Majithia's case, in order to ascertain whether the cause of action had arisen within the territorial limits of the jurisdiction of the Court of Magistrate in which the complaint is filed, the above facts would disclose that it is not possible for this Court to arrive at any conclusion, as sought to be contended on behalf of the petitioner that there is any concoction of the cause of action to enable the respondent No.2 to file a complaint at Indore.

7. Whether the facts stated in the complaint are sufficient to disclose the offence punishable under Section 406 or Section 420 of the IPC or whether those facts would disclose any other offence or that the facts are not sufficient for disclosing any offence under the

IPC, is a matter to be decided primarily by the Magistrate before whom the complaint is filed or by the Court to which the Magistrate is subordinate to. Undoubtedly, the Court of the Magistrate at Indore cannot be said to be a Court subordinate to this Court for the purpose of revisional or supervisory jurisdiction over the Magistrate presiding over that Court at Indore as the said Court would be a subordinate Court to the High Court of Madhya Pradesh and not of the Bombay High Court in that regard. Undoubtedly, when there is concoction of cause of action, certainly the ruling of the Apex Court in Navinchandra Majithia's case would be attracted but in a case where prima facie some sort of relationship between the parties or some sort of dealing between the parties are disclosed and same could give rise to dispute leading to criminal liability of one of the parties, certainly it would be within the domain of the Magistrate of the area wherein the offence is stated to have been committed and in case of any impropriety or illegality by such Magistrate while taking cognizance of such offence or passing any order in that regard, the Court to which such Court of the Magistrate is subordinate to will be the Court competent to exercise the jurisdiction either in the nature of revisional powers or supervisory powers. Being so, it would not be appropriate for this Court to entertain any grievance as regards the impropriety or illegality

committed by the Magistrate at Indore while taking cognizance of the offence as the jurisdiction in that regard vests in the High Court of Madhya Pradesh.

8. For the reasons stated above, therefore, there is no case for interference in the impugned order and hence the petition is dismissed. Interim relief granted earlier stands vacated. The rule is discharged with no order as to costs.

9. At this stage, the learned Advocate for the petitioner prays for stay of the warrant which has been issued pursuant to the failure on the part of the petitioner in answer to the summons issued by the Magistrate at Indore. The execution of the order shall stand suspended for a period of four weeks from today.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)